



(Counterclaim ¶ 54(4)) and (ii) Roche sold, used, and distributed PRODUCTS for diagnostic or therapeutic use, in breach of the research market for research use only contract restriction (Agmt ¶ XV) (Counterclaim ¶ 54(3)). These alleged breaches, in direct contravention of contract provisions, completely distinguish this case from *Matrix*.

More generally, the *Matrix* case is distinguishable because here Roche expressly agreed that it obtained the right to be a distributor for Enzo subject to the contract limitations. Nevertheless, Roche ignored those limitations by selling PRODUCTS that were not listed, in addition to that subset of listed PRODUCTS that Roche was permitted to sell and manufacture (Counterclaim ¶¶ 54(1) and (2)). Roche cannot now ignore its contractual agreement.<sup>1</sup>

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Respectfully submitted,

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<sup>1</sup> Roche's contract obligations extended beyond the patent protection period of any particular patent and continued until the *last* Enzo Patent expired. Accordingly, Roche undertook to be contractually bound regardless of whether there was in fact a patent infringement by it.